

1 Michael B. Love, WSBA No. 20529  
2 Jessica C. Allen, WSBA No. 39873  
3 Workland & Witherspoon, PLLC  
4 601 West Main Avenue, Suite 714  
5 Spokane, WA 99201  
6 (409)455-9077 Phone  
7 (509)614-6441 Fax  
8 Email: [Mlove@workwith.com](mailto:Mlove@workwith.com)  
9 [JAllen@workwith.com](mailto:JAllen@workwith.com)

Attorneys for Plaintiff

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 JODIE M. KELLEY, a single  
13 individual,

14  
15 Plaintiff,

16  
17 v.  
18

19 AMAZON.COM, INC., a Delaware  
20 corporation and AMZN WACS, INC.,  
21 a Delaware corporation.  
22

23 Defendants.  
24

Case No. CV-12-5132-TOR

COMPLAINT

*Demand for Jury Trial*

25 Plaintiff, Jodie M. Kelley, through her attorneys of record, Michael B.  
26 Love and Jessica C. Allen of Workland Witherspoon, PLLC, and for cause of  
27 action against the above-named Defendants, complains, alleges, and avers as  
28  
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30  
31 COMPLAINT - 1  
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Workland & Witherspoon

Attorneys at Law

A PROFESSIONAL LIMITED LIABILITY COMPANY  
601 West Main Avenue, Suite 714  
Spokane, Washington 99201-0677  
Telephone: (509) 455-9077  
Fax: (509) 624-6441

1 follows:

2 **I. Jurisdiction, Venue, and Parties**

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4 1.1 These claims arise under the Family Medical Leave Act (“FMLA”),  
5 29 U.S.C. §2611 *et seq.*; the Washington Law Against Discrimination, RCW  
6 Chapter 49.60; Title VII of the Civil Rights Act of 1964, as amended; and the  
7 Americans with Disabilities Act of 1990, as amended.  
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9  
10 1.2 This Court has jurisdiction over the federal claims under 42 U.S.C.  
11 §1988, 29 U.S.C. §2617, and 28 U.S.C. §1331.  
12

13  
14 1.3 This Court has jurisdiction over the state law claims pursuant to the  
15 doctrine of supplemental jurisdiction, 28 U.S.C. §1367(a).  
16

17 1.4 Plaintiff Jodie M. Kelley at all material times has been a resident of  
18 the state of Washington. She is a female and a single mother.  
19

20 1.5 Defendant Amazon.com, Inc., a Delaware corporation, has its  
21 headquarters in Seattle, Washington. Amazon.com has a customer service  
22 operation center in Kennewick, Washington. Plaintiff Jodie Kelley was  
23 employed by AMZN WACS, Inc. (hereinafter Amazon.com and AMZN  
24 WACS, Inc. will be referred to collectively as “Amazon.com”). At all relevant  
25 times, Amazon.com employed over 50 people, and over 8 in Washington.  
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31 COMPLAINT - 2  
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Workland & Witherspoon

Attorneys at Law

A PROFESSIONAL LIMITED LIABILITY COMPANY  
601 West Main Avenue, Suite 714  
Spokane, Washington 99201-0677  
Telephone: (509) 455-9077  
Fax: (509) 624-6441

## II. Facts

2.1 On or around October 26, 2006, Jodie Kelley began work as a Customer Service Associate for Amazon.com in its Customer Service Operations center in Kennewick, Washington. In mid-September of 2007, Ms. Kelley was promoted to Temporary Customer Service Lead, a first level manager position.

2.2 Jodie Kelley's work as a Customer Service Associate entailed assisting Amazon.com's customers with problems and/or questions concerning orders.

2.3 Jodie Kelley suffers from endometriosis and severe migraines that substantially limit her ability to walk, sit or stand upright for long periods of time. The above-described health conditions were communicated to Amazon.com.

2.4 On or around January of 2008, Ms. Kelley was promoted to Customer Service Lead.

2.5 On or around July of 2008, Ms. Kelley completed Amazon.com's "Shift Preference Form" for Customer Service Lead and provided:

1 I have no daycare on Saturday's. I know daycare is not  
2 taken into account but I am a single parent and not sure  
3 what would happen.

4 2.6 Plaintiff applied for a Monday through Friday work schedule since  
5 working weekends was problematic as she would have to pay double for child  
6 care on the weekends. Amazon.com was aware of this child care issue;  
7 however, the position was given to another female employee without children.  
8

9  
10 2.7 On or around March of 2009, Ms. Kelley received a favorable  
11 performance review for Customer Service Lead.  
12

13 2.8 On August of 2009, due to Ms. Kelley's health conditions and  
14 interest in pursuing further education, Jodie Kelley stepped down to a part-time  
15 work arrangement, as a Customer Service Associate. On or around October of  
16 2009, Ms. Kelley returned as full-time Customer Service Associate. Jodie  
17 Kelley continued to receive favorable reviews concerning her work at  
18 Amazon.com.  
19  
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22

23 2.9 On or around September and October of 2009, Ms. Kelley's  
24 endometriosis and migraines caused her to be admitted to the emergency room.  
25 Consequently, she missed work due to her health conditions.  
26  
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1           2.10 Amazon.com calculates the Expressed Dissatisfaction Rate  
2 (“EDR”) of customers based on their experience with a Customer Service  
3 Associate. After the Customer Service Associate addresses the customer’s issue  
4 or concern, the customer has an option to complete a survey concerning their  
5 experience with the Customer Service Associate. EDR is correlated to  
6 telephone call volume.  
7  
8  
9

10           2.11 On or around November 9, 2009, Ms. Kelley received a  
11 “Performance Step Plan Re: Action Plan to Lower and Maintain EDR”. This  
12 Plan was developed in order to assist and/or improve some aspects of Ms.  
13 Kelley’s work performance, in particular, to lower her EDR rate.  
14  
15  
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17           2.12 On or around December of 2009, Ms. Kelley received a favorable  
18 internal e-mail concerning her “stellar EDR” from an Operation Level Manager,  
19 Evan James.  
20  
21

22           2.13 On or around January of 2010, Ms. Kelley described her serious  
23 health conditions on Amazon.com’s “Medical Recertification Request Form.”  
24

25           2.14 On or around May of 2010, Ms. Kelley applied for several  
26 promotions to Customer Service Lead. Despite her good performance and  
27 positive evaluations, she was told by a Manager that the Customer Service Lead  
28  
29

1 position required someone reliable and punctual and Ms. Kelley did not fit the  
2 criteria. Ms. Kelley did not receive a promotion.  
3

4 2.15 On or around May of 2010, Ms. Kelley informed her supervisor,  
5 Susan Meyers, that she believes she is treated poorly due to her disabilities.  
6 Later that day, Ms. Kelley is placed on suspension due to allegations that Ms.  
7 Kelley used her family medical leave to satisfy mandatory overtime. This  
8 investigation uncovered no wrongdoing on the part of Ms. Kelley.  
9  
10  
11

12 2.16 On the day Ms. Kelley returned from her suspension, Ms. Kelley  
13 requested a reasonable accommodation for her disability to Amazon.com's  
14 Human Resources employee. Amazon.com did not answer Ms. Kelley's  
15 request.  
16  
17

18 2.17 On or around May 4, 2010, due to Ms. Kelley's health conditions,  
19 her doctor wrote a note which provided that Ms. Kelley was not to work more  
20 than 8 hours a day. Approximately a week later, Amazon.com notified Ms.  
21 Kelley of her 12 hour overtime day to complete the mandatory overtime. On or  
22 around May 20, 2010, Amazon's HR department is notified that Plaintiff is  
23 working 10 hour shifts even though she has a doctor's note to work no more  
24 than 8 hours shifts.  
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1           2.18 In addition, on or around June of 2010, Ms. Kelley's manager  
2 assigns mandatory overtime to Ms. Kelley. Ms. Kelley continues to work a 4  
3 day work week, 10 hours per day and partial weekend assignment.  
4

5           2.19 On or around June of 2010, Ms. Kelley receives an infraction for  
6 leaving work to take her daughter to the emergency room for an injury to her  
7 eye. Ms. Kelley files an "Attendance Exception" for missing work. The  
8 "Attendance Exception" is approved by Amazon.com; however, Ms. Kelley's  
9 manager asserts that by having an "Attendance Exception" approved, it will  
10 exhaust all paid time off. Amazon.com could not locate this internal policy and  
11 later restored Ms. Kelley's paid time off.  
12  
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17           2.20 On or around August of 2010 and November of 2010, Ms. Kelley  
18 receives a warning concerning not meeting the EDR goal. In December of  
19 2010, Ms. Kelley passed her EDR step plan and her manager stated, "Excellent  
20 job and keep up the good work!"  
21  
22

23           2.21 On or around January of 2011, Jodie Kelley notifies Amazon.com  
24 of her doctor's restriction for her to work no more than 8 hours a day.  
25 Amazon.com continues to have Ms. Kelley on the 4 days a week, 10 hour day  
26 schedule until the time of her termination in March of 2011.  
27  
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1           2.22 On or around February of 2011, Plaintiff is placed on a Step Plan to  
 2 assist in the gradual improvement towards the lower EDR goal. For the first  
 3 week on the Step Plan, Ms. Kelley received a 1.72 EDR when the EDR goal was  
 4 5.7. Ms. Kelley continues to receive positive feedback from an Amazon.com  
 5 manager, i.e., “Drastically lower EDR... Having all the ‘tools’ to build a perfect  
 6 contact... Willingness to go the extra mile.”  
 7  
 8  
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10           2.23 Even in light of Ms. Kelley’s improved EDR percentages and  
 11 positive feedback from Amazon.com’s manager, on or around March 10, 2011,  
 12 Ms. Kelley is involuntarily terminated. The stated pretext for termination was  
 13 due to “failure to meet performance expectations, specifically for quality”.  
 14  
 15  
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### 17                           **III. Claims for Relief**

#### 18           **First Claim for Relief** 19           **Violation of the Family and Medical Leave Act**

20           For her first claim for relief, Jodie Kelley alleges as follows:  
 21  
 22

23           3.1 Jodie Kelley re-alleges each and every paragraph set forth above as  
 24 though fully set forth herein.  
 25

26           3.2 Defendant Amazon.com was a covered employer under the Family  
 27 and Medical Leave Act.  
 28  
 29  
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1           3.3 Jodie Kelley was eligible for Family and Medical Leave Act  
2           protections.  
3

4           3.4 Jodie Kelley was entitled to leave under the Family and Medical  
5           Leave Act and Amazon.com interfered with the benefits to which Ms. Kelley  
6           was entitled.  
7

8           3.5 Amazon.com viewed Ms. Kelley's taking of Family Medical Leave  
9           time to be a negative factor in its decision to terminate her.  
10

11           3.6 Amazon.com's interference with, discrimination, and retaliation  
12           denied Jodie Kelley's rights under the Family and Medical Leave Act in  
13           violation of 29 U.S.C. §2615(a).  
14

15           3.7 As a result of Amazon.com's actions, Ms. Kelley has lost wages,  
16           benefits, and other compensation. These losses are continuing and this  
17           Complaint will be amended at the time of trial to state the total amounts.  
18

19           3.8 Defendant Amazon.com acted willfully in its violation of the  
20           FMLA, entitling Jodie Kelley to liquidated damages in an amount equal to her  
21           lost wages and benefits, together with interest thereon. The amount of  
22           liquidated damages to which Jodie Kelley is entitled is continuing and will be  
23           amended at the time of trial to accurately reflect these damages.  
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1           3.9 As a further result of Defendant Amazon.com's actions, Jodie  
2 Kelley is entitled to reasonable costs and attorney fees pursuant to 29 U.S.C.  
3 §2617(a)(3).  
4

5 **Second Claim for Relief**  
6 **Violation of Washington Law Against Discrimination**  
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8           For her second claim for relief, Jodie Kelley alleges as follows:

9           4.1 Jodie Kelley re-alleges each and every paragraph set forth above as  
10 though fully set forth herein.  
11

12           4.2 Discrimination in the form of preferential treatment and/or  
13 retaliation on the basis of disability, gender, and/or caregiver responsibility is  
14 unlawful employment conduct pursuant to Chapter 49.60 RCW.  
15

16           4.3 Jodie Kelley was eligible for protected leave under the Washington  
17 Law Against Discrimination at the time she took leave.  
18

19           4.4 By failing to accommodate Ms. Kelley's schedule, Defendant  
20 Amazon.com discriminated against her based on caregiver responsibility.  
21

22           4.5 By interfering, failing to accommodate, and discriminating against  
23 Jodie Kelley based on her disability, Defendant Amazon.com violated Ms.  
24 Kelley's rights.  
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1           4.6 Defendant Amazon.com terminated Jodie Kelley because she took  
2 medical leave, in violation of Washington's Law Against Discrimination.  
3

4           4.7 As a result of Defendant Amazon.com's actions, Jodie Kelley has  
5 lost wages, benefits, and other compensation. These losses are continuing and  
6 this Complaint will be amended at the time of trial to state the total amounts.  
7

8           4.8 Jodie Kelley has also suffered non-economic damages, including  
9 emotional distress, loss of enjoyment of life, stress, worry, humiliation, and loss  
10 of career opportunities and future earning capacity. These damages are  
11 continuing. Jodie Kelley is entitled to recover payment for these damages in an  
12 amount to be determined by the jury at trial.  
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17           4.9 Pursuant to RCW 49.60.030 Jodie Kelley is entitled to her attorney  
18 fees and costs as a result of Amazon.com's discriminatory employment practices  
19 and conduct.  
20  
21

22           4.10 Pursuant to Chapter RCW 49.60 and the case law interpreting it,  
23 Jodie Kelley is entitled to recover the adverse tax consequences from  
24 Amazon.com relating to any award for economic damages.  
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**Third Claim for Relief**

**Disability Discrimination in Violation of Title VII, 42 U.S.C. §2002e *et seq.***

For her third claim for relief against Defendant, Plaintiff Jodie Kelley alleges:

5.1 Jodie Kelley re-alleges each and every paragraph set forth above as though fully set forth herein.

5.2 By the actions described herein, Defendant Amazon.com discriminated against Plaintiff Jodie Kelley on the basis of disability.

5.3 As a result of Defendant Amazon.com's actions, Jodie Kelley has lost wages, benefits, and other compensation. These losses are continuing and this Complaint will be amended at the time of trial to state the total amounts.

5.4 Jodie Kelley has also suffered non-economic damages, including emotional distress, loss of enjoyment of life, stress, worry, humiliation, and loss of career opportunities and future earning capacity. These damages are continuing. Jodie Kelley is entitled to recover payment for these damages in an amount to be determined by the jury at the time of trial but not to exceed \$300,000.

5.5 The actions of the Defendant was taken in bad faith, maliciously or with reckless indifference to Jodie Kelley's rights, entitling Jodie Kelley to

1 punitive damages in an amount to be determined by the jury at the time of trial  
2 but not to exceed \$300,000.  
3

4 5.6 Jodie Kelley is also entitled to recover her reasonable attorney fees  
5 and costs incurred herein, together with such other relief as the Court may deem  
6 just and equitable.  
7

8  
9 **Fourth Claim for Relief**  
10 **Violation of the Americans with Disability Act of 1990**

11 For her fourth claim for relief against Defendant, Plaintiff Jodie Kelley  
12 alleges:  
13

14 6.1 Jodie Kelley re-alleges each and every paragraph set forth above as  
15 though fully set forth herein.  
16

17 6.2 By the actions described herein, Defendant Amazon.com  
18 discriminated against Jodie Kelley and failed to provide reasonable  
19 accommodation for Ms. Kelley on the basis of her disability.  
20

21 6.3 As a result of Defendant Amazon.com's actions, Jodie Kelley has  
22 incurred lost wages, benefits, and other compensation. These losses are  
23 continuing and this Complaint will be amended at the time of trial to state the  
24 total amounts.  
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1           6.4 Jodie Kelley has also suffered non-economic damages, including  
2 emotional distress, loss of enjoyment of life, stress, worry, humiliation, and loss  
3 of career opportunities and future earning capacity. These damages are  
4 continuing. Jodie Kelley is entitled to recover payment for these damages in an  
5 amount to be determined by the jury at the time of trial but not to exceed  
6 \$300,000.  
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10           6.5 The actions of the Defendant were taken in bad faith, maliciously  
11 or with reckless indifference to Jodie Kelley's rights, entitling Jodie Kelley to  
12 punitive damages in an amount to be determined by the jury at the time of trial  
13 but not to exceed \$300,000.  
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16  
17           6.6 Jodie Kelley is also entitled to recover her reasonable attorney fees  
18 and costs incurred herein, together with such other relief as the Court may deem  
19 just and equitable.  
20

21           WHEREFORE, Plaintiff Jodie Kelley prays for judgment against  
22 Defendant Amazon.com for the following relief:  
23

- 24  
25       1. For her lost wages and benefits, including future losses, in an amount to  
26 be determined by the jury at the time of trial, along with prejudgment  
27 interest thereon;  
28  
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2. For liquidated damages in the amount equal to her lost wages and benefits to be determined by the jury at the time of trial, along with prejudgment interest thereon;
3. For non-economic damages in an amount to be determined by the jury at the time of trial;
4. For punitive damages in an amount to be determined by the jury at the time of trial;
5. For reasonable attorney fees and costs incurred herein;
6. For adverse tax consequences relating to economic damages recovered per Washington's Law Against Discrimination; and
7. For such other relief as the Court may deem just and proper.

DATED this 9<sup>th</sup> day of October, 2012.

/s/Michael B. Love

Michael B. Love, WSBA No. 20529

Jessica C. Allen, WSBA No. 39873

Workland & Witherspoon, PLLC

601 West Main Avenue, Suite 714

Spokane, WA 99201

(509)455-9077

(509)624-6441 Fax

Email: [Mlove@workwith.com](mailto:Mlove@workwith.com)

Attorneys for Plaintiff

Jodie M. Kelley